IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12557 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHAH AVINASH JASWNTLAL AND OTHERS
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MR DEVNANI for MR YOGESH S LAKHANI for Petitioners.
MS FALGUNI PATEL, AGP for Respondents.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 13/10/2006

ORAL JUDGMENT

By filing this petition, the petitioners have prayed that appropriate direction may be given to the respondents to continue them in service as

full time lecturers on their respective posts. It is also prayed that during pendency of the petition, services of the petitioners may not be terminated.

This petition is pending before this Court since 1993. The petitioners have continued in service in view of interim order granted by this Court. The petitioners were appointed on ad-hoc basis as lecturers in Government College by orders produced at Annexures A to C collectively. As per the appointment order, their appointment was temporary and since the petitioners were apprehending termination, they have filed this petition with a prayer that their services may be regularized.

Learned advocate for the petitioner submitted that till candidate selected through GPSC is available, services of the petitioners are required to be continued. He further submitted that in case the question of termination arises, principle of 'last come first go' should be followed.

Ms.Falguni Patel, learned AGP submitted that in view of the judgement of Division Bench of this Court in **K.D.Vohra V. Kamleshbhai Gobarbhai Patel** reported in **2003 (2) GLR 1342,** the petitioners cannot be continued on said post as their appointment was ad-hoc. She further submitted that in view of the direction given in Special Civil Application No.5415/1997 by this Honourable Court, petitioners' services would be continued till GPSC selected candidates are available or any other employees are transferred from other department to the department where petitioners are serving. She further submitted that even if occasion arises for termination of services of the petitioners, principle of 'last come first go' will be followed.

In response to the petition, affidavit-in-reply has been filed by Joint Director, Commissioner of Higher Education Office, Gandhinagar. In paragraph 5 of the affidavit, it is stated that no GPSC selected candidates are posted vice the petitioners on their posts.

I have heard both the learned advocates and I have also gone through the decision of learned Single Judge delivered in Special Civil Application No.5415/1997. Considering the facts and circumstances of the case and considering the aforesaid judgement, prayer of the petitioners to the effect that their services may be regularized cannot be granted, however, this petition is disposed of with following directions.

(i) Services of the petitioner may be continued till they are required to be replaced either by GPSC selected candidate or by any other suitable candidate by way of transfer.

(ii) In case the services of the petitioners are required to be terminated, then principle of 'last come first go' should be followed.

(iii) It is pointed out by learned advocate for the petitioners that some similarly situated lecturers have already been sent to private granted colleges. If that be so and if Government has evolved any policy to send such lecturers in private granted college, case of the petitioners also may be considered, however, it is for the Government to consider whether petitioners can be sent in a private granted college as a lecturer and this question is left to the discretion of the Government.

(iv) As per the judgement of the Division Bench, the Government

shall consider to form a separate cadre and, thereafter, the Government may also consider whether the petitioners can be accommodated in such cadre in light of the directions given by Division Bench of this Court.

In view of aforesaid directions, this petition is partly allowed. Rule is made absolute accordingly with no order as to costs.

(P.B.Majmudar, J.)

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